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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Nicol A. Ybarra,

10 Plaintiff,

11 v.

12 Buckeye Police Department, et al.,

13 Defendants.
14

No. CV-20-00003-PHX-DWL

ORDER

15 Pending before the Court is Plaintiff's Application for Leave to Proceed In Forma
16 Pauperis (Doc. 2), which the Court hereby grants. The Court will screen Plaintiff's
17 complaint (Doc. 1) pursuant to 28 U.S.C. § 1915(e)(2)¹ before it is allowed to be served.
18 Pursuant to that screening, the complaint will be dismissed.

19 **I. Legal Standard**

20 Under 28 U.S.C. § 1915(e)(2), a complaint is subject to dismissal if it contains
21 claims that are "frivolous or malicious," that "fail[] to state a claim upon which relief
22 may be granted," or that "seek[] monetary relief against a defendant who is immune from
23 such relief." *Id.* Additionally, under Federal Rule of Civil Procedure 8(a)(2), a pleading
24 must contain a "short and plain statement of the claim showing that the pleader is entitled
25 to relief." *Id.* Although Rule 8 does not demand detailed factual allegations, "it demands
26 more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v.*

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28 ¹ Although section 1915 largely concerns prisoner litigation, section 1915(e) applies
to all in forma pauperis proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.").

1 *Iqbal*, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of
2 action, supported by mere conclusory statements, do not suffice.” *Id.*

3 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
4 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
5 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
6 content that allows the court to draw the reasonable inference that the defendant is liable
7 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
8 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
9 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
10 specific factual allegations may be consistent with a constitutional claim, a court must
11 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
12 at 681.

13 The Ninth Circuit has instructed that courts must “construe *pro se* filings
14 liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A “complaint [filed by a
15 *pro se* litigant] ‘must be held to less stringent standards than formal pleadings drafted by
16 lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).
17 Conclusory and vague allegations, however, will not support a cause of action. *Ivey v.*
18 *Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). A liberal
19 interpretation may not supply essential elements of the claim that were not initially pled.
20 *Id.*

21 “If a pleading can be cured by the allegation of other facts, a *pro se* litigant is
22 entitled to an opportunity to amend before the final dismissal of the action.” *Ball v. Cty.*
23 *of Maricopa*, 2017 WL 1833611, *1 (D. Ariz. 2017) (concluding that complaint could not
24 be amended to state a cognizable claim and dismissing with prejudice).

25 **II. Analysis**

26 Plaintiff sued two defendants: (1) Buckeye City Police Department and (2)
27 Buckeye Police Officer A. Price.

28 The facts, in their entirety, are as follows: “The officer A. Price committed a

1 federal crime against [Plaintiff] by committing perjury by law under the direct orders of
2 his superiors to make the ‘Buckeye Police Department look fluffed up.’” (Doc. 1 at 1.)
3 Plaintiff seeks \$5 million in damages. (*Id.*)

4 The facts as alleged do not give rise to any cognizable claims. In short, there is
5 only one “fact” alleged—that Officer Price committed perjury—but this is a legal
6 conclusion, which cannot support a cause of action. *Ivey*, 673 F.2d at 268. Additionally,
7 the complaint does not allege a date on which the challenged conduct occurred.

8 Furthermore, the Court has an obligation to determine whether it has subject-
9 matter jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).
10 Pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[i]f the court
11 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
12 action.”

13 Plaintiff alleges that all parties are Arizona citizens and asserts that this Court has
14 jurisdiction “pursuant to Arizona Blue Laws §§ Falsifying legal documents.” (*Id.*)
15 Presumably, Plaintiff brings this action on the basis of federal question jurisdiction, as the
16 complaint references a “federal crime.” (Doc. 1 at 1.) But no federal law is cited, and
17 therefore Plaintiff failed to establish federal question jurisdiction.

18 The Court will dismiss the complaint with leave to amend. “Dismissal of a *pro se*
19 complaint without leave to amend is proper only if it is absolutely clear that the
20 deficiencies of the complaint could not be cured by amendment.” *Schucker v. Rockwood*,
21 846 F.2d 1202, 1203-04 (9th Cir. 1988) (internal quotation marks and citation omitted).
22 “If a pleading can be cured by the allegation of other facts, a *pro se* litigant is entitled to
23 an opportunity to amend before the final dismissal of the action.” *Ball v. Cty. of*
24 *Maricopa*, 2017 WL 1833611, *1 (D. Ariz. 2017).

25 Plaintiff’s amended complaint must adhere to all portions of Rule 7.1 of the Local
26 Rules of Civil Procedure (“LRCiv”). Additionally, Plaintiff is advised that the amended
27 complaint must satisfy the pleading requirements of Rule 8 of the Federal Rules of Civil
28 Procedure. Specifically, the amended complaint shall contain a short and plain statement

1 of the grounds upon which the Court’s jurisdiction depends, a short and plain statement
2 of each specific claim asserted against each Defendant, and a good faith demand for the
3 relief sought. Fed. R. Civ. P. 8(a)(1)-(3). These pleading requirements are to be set forth
4 in separate and discrete numbered paragraphs, and “[e]ach allegation must be simple,
5 concise, and direct.” Fed. R. Civ. P. 8(d)(1); *see also* Fed. R. Civ. P. 10(b) (“A party
6 must state its claims or defenses in numbered paragraphs, each limited as far as
7 practicable to a single set of circumstances.”). Where a complaint contains the factual
8 elements of a cause, but those elements are scattered throughout the complaint without
9 any meaningful organization, the complaint does not set forth a “short and plain
10 statement of the claim” for purposes of Rule 8. *Sparling v. Hoffman Constr. Co.*, 864
11 F.2d 635, 640 (9th Cir. 1988).

12 Plaintiff is advised that if the amended complaint fails to comply with the Court’s
13 instructions explained in this Order, the action may be dismissed pursuant to
14 section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil
15 Procedure. *See McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996) (affirming
16 dismissal with prejudice of amended complaint that did not comply with Rule 8(a)).
17 Given this specific guidance on pleading requirements, the Court is not inclined to grant
18 Plaintiff leave to file another amended complaint if the first amended complaint is found
19 to be deficient. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (affirming
20 dismissal with prejudice where district court had instructed *pro se* plaintiff regarding
21 deficiencies in prior order dismissing claim with leave to amend); *Ascon Props., Inc. v.*
22 *Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) (“The district court’s discretion to
23 deny leave to amend is particularly broad where plaintiff has previously amended the
24 complaint.”).

25 Plaintiff is directed to become familiar with the Local Rules and the Federal Rules
26 of Civil Procedure and is reminded that the Federal Court Self-Service Clinic provides
27 free civil legal help to self-represented litigants. (*See* Notice to Self-Represented
28 Litigant, Doc. 5 at 7.)

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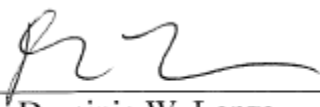
Accordingly,

IT IS ORDERED granting the Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 2).

IT IS FURTHER ORDERED that Plaintiff's complaint (Doc. 1) is **dismissed** with leave to file an amended complaint by **February 6, 2020**. The amended complaint must adhere to LRCiv 7.1.

IT IS FURTHER ORDERED that if Plaintiff fails to file an amended complaint by **February 6, 2020**, the Clerk of Court shall terminate the action.

Dated this 6th day of January, 2020.



Dominic W. Lanza
United States District Judge